

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN**

UNITED STATES OF AMERICA,

Plaintiff,

And

NATURAL RESOURCES DEFENSE  
COUNCIL, INC. AND SIERRA CLUB,

Proposed Intervenor-Plaintiffs,

v.

DTE ENERGY COMPANY AND  
DETROIT EDISON COMPANY,

Defendants.

Civil Action No.  
2:10-cv-13101-BAF-RSW

Judge Bernard A. Friedman

Magistrate Judge R. Steven Whalen

**DEFENDANTS' OPPOSITION TO THE GOVERNMENT'S EX PARTE MOTION  
FOR PERMISSION TO FILE A REPLY BRIEF OF MORE THAN FIVE PAGES**

Pursuant to Rule 7.1(c) of the Local Rules, Defendants DTE Energy Company and Detroit Edison Company (collectively, "Detroit Edison") respectfully submit the following opposition to Plaintiff's ("EPA") *ex parte* motion for permission to file a 15-page reply brief in support of its motion for a preliminary injunction.<sup>1</sup>

As EPA makes clear in its motion, the reason it needs an additional 10 pages for its reply brief is because this case is complex; this, once again, shows that the case is not appropriate for resolution on a preliminary injunction. Even without considering EPA's reply brief, the parties already have submitted lengthy principal briefs (36 pages, each) and nearly a thousand pages of

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<sup>1</sup> Detroit Edison notes at the outset that the Local Rules do not allow a party to file an *ex parte* motion seeking additional pages for a reply brief. Compare Local Rule 7.1(d)(3)(A) with 7.1(d)(3)(B). Consequently, EPA's *ex parte* motion is not proper.

extensive declarations from at least 15 proposed experts opining on complicated and sharply contested issues. Under this Court's rules, the parties' principal briefs on a motion are limited to 20 pages, and the reply to 5 pages. Local Rule 7.1(d)(3). If granted, EPA's request would result in briefing on a *preliminary* motion that exceeds by nearly 200% the number of pages the Court allows for briefing on motions addressing the *final merits* of a case.

Moreover, granting EPA's request would provide it with a total of 51 pages of argument against Detroit Edison's 36 pages. This would result in a substantial departure from the normal allocation of 25 pages of briefing for moving parties and 20 pages of briefing for responding parties set forth in the Local Rules. Local Rule 7.1(d)(3). Should the Court be inclined to allow EPA to exceed the page limits for its reply brief, Detroit Edison submits that it would be appropriate for the Court to grant the enlargement up to 9 pages, which would preserve the reasonable proportions for briefs set forth in this Court's Local Rules. In fact, before it filed an *ex parte* motion, EPA asked Detroit Edison for its consent to exceed page limits in EPA's reply, and counsel for Detroit Edison indicated that Detroit Edison would consider agreeing to an enlargement that does not exceed 9 pages.

Respectfully submitted, this 18th day of November 2010.

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **DEFENDANTS' OPPOSITION TO THE GOVERNMENT'S EX PARTE MOTION FOR PERMISSION TO FILE A REPLY BRIEF OF MORE THAN FIVE PAGES** was electronically filed with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to the following attorneys of record as follows:

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This 18th day of November, 2010.

/s/ F. William Brownell